No. 87-2110

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1987

WILLIAM JONES

Petitioner,

vs.

CHARLES J. SCHAFFER, JR., Individually
and as Administrator of the Teamsters
Pension Trust Fund of Philadelphia and Vicinity
and
WILLIAM LEMON, VINCENT DAGEN
FREDERICK W. FOX, JR.,
JOSEPH CIMINO, PETER P. COYLE
and PAUL CARDULLO, Trustees of
the Teamsters Pension Trust Fund
of Philadelphia and Vicinity

and

CROSSMAN'S VAN AND STORAGE COMPANY, INC.

Respondents.

On Appeal from the United States Court of Appeals for the Third Circuit

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

A. Where good faith regular contributions were made continuously from 1955 through 1983 to the Teamsters Pension Fund, is the federal court precluded from hearing the truck driver-retiree's appeal from the decision of the arbitrator?

B. Where a truck driver-retiree had personally made good faith regular contributions over a period of many years to the Teamsters Pension Fund and where he is first notified after he retires that all such payments were through mistake, should the said Pension Fund refund the contributions to the truck driver-retiree?

C. Where the Court of Appeals for the Third Circuit differs from other federal Courts of Appeal in construing the retiree's right to a refund, should that standard be reconsidered?

D. Was it arbitrary and capricious for trustees of the Teamsters Pension Trust Fund of Philadelphia and Vicinity to deny truck driver-retiree a retirement pension and simultaneously refuse to refund money contributed by truck driver-retiree through alleged mistake?

E. Were there material issues of fact with regard to truck driver – retiree's claims of unlawful discrimination under the Civil Rights Act of 1871 to preclude summary dismissal of truck driver-retiree's Complaint?

F. Does the doctrine of federal preemption under the Employee Retirement Income Security Act preclude to federal court from hearing truck driver-retiree's state law claims?

LIST OF ALL PARTIES

WILLIAM JONES

PETITIONER

VS.

CHARLES J. SCHAFFER, JR., Individually and as Administrator of the Teamsters Pension Trust Fund of Philadelphia and Vicinity

and

WILLIAM LEMON, VINCENT DAGEN, FREDERICK W. FOX, JR., JOSEPH CIMINO, PETER P. COYLE and PAUL CARDULLO, Trustees of the Teamsters Pension Trust Fund of Philadelphia and Vicinity

and

CROSSMAN'S VAN AND STORAGE COMPANY, INC.

RESPONDENTS

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REFERENCE TO THE OPINION OF THE LOWER COURT

The District Court entered summary judgement on September 4, 1987. The Court of Appeals for the Third Circuit affirmed the District Court on March 25, 1988. On April 7, 1988 it declined to publish its opinion, the text of which is in the Appendix hereto.

The Court of Appeals for the Third Circuit, without argument or consideration of the equities, affirmed an extremely harsh and fundamentally unfair result. It decided that, on the one hand, William Jones was not a party to the collective bargaining agreement while, on the other hand, bound him to its apparent terms – terms which were construed many years after the fact and applied retroactively.

Hearing on William Jones' civil rights claims based upon age and race discrimination were summarily denied notwithstanding factual conflicts. The question of whether the motivation for creating "commission drivers" was economical or whether it was for purposes of unlawful age discrimination or race discrimination, has never reached a factual determination. William Jones has been denied any hearing whatsoever on those claims. Such a situation is an obvious abridgement of his right to due process of law and is fundamentally unfair.

JURISDICTION

This case arises from a federal question under the Employment Retirement Income Security Act (ERISA) 29 USC 1001 et seq., the Age Discrimination in Employment

Act 29 USC 621, the Labor Management Reporting Act 29 USC 140 et seq. and the Civil Rights Act of 1871, 42 USC 1985(3) and 42 USC 1986. Jurisdiction of this Court to review this case on petition for certiorari rests upon 28 USC 1254(1). The present appeal is taken as a matter of right under the Constitution of the United States.

The ERISA expressly authorizes the bringing of Jones' civil claim. The Act provides as follows:

§1132. Civil enforcement

(a) Persons empowered to bring civil action

A civil action may be brought

(1) by a participant or beneficiary
(A) for the relief provided for in subsection (c) of this section, of

(B) to recover benefits due to him under the terms of his plan to enforce his rights under the terms of the plan, or to clarify, his rights, to future benefits under the terms of the plan;

Further, at 29 U.S.C.-1132(e)(1), the Act vests jurisdiction in the District Court of the United States:

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

ERISA provides further that a claims procedure must be established within the structure of the benefit plans, 29 U.S.C. §1133.

The Order of the Court of Appeals for the Third Circuit was entered March 25, 1988.

STATUTES

28 USC §1254

29 USC §140

29 USC §621

29 USC §1001 et seq

42 USC §1985

42 USC §1986

STATEMENT OF THE CASE

The petitioner, William Jones, is the plaintiff below. Jones seeks an award of a retirement pension or, in the alternative, a refund of the monies he paid during many years through mistake. The monies are held by the Teamsters Pension Trust Fund of Philadelphia and Vicinity. Jones retired in 1983 at age 62, after suffering a stroke. For the continuous period from 1955 until 1983, William Jones was a driver for Crossman's Van and Storage Company (hereinafter "Company") and was a member of the Teamsters Local Union 513, transporting merchandise and goods, on behalf of Company, to various cities and

towns throughout the United States. Under a collective bargaining agreement between Company and the local union of Teamsters, the Company was required to make regular contributions to the multiemployer Teamsters Pension Trust Fund of Philadelphia and Vicinity (hereinafter "Fund") on behalf of employees. Contributions to other Teamster benefit funds were also required but those Funds (such as Health and Welfare) are not at issue in this case.

Between 1955 and 1972, the Company made regular contributions to the Fund on behalf of William Jones pursuant to the aforesaid collective bargaining agreement. At the time of the petroleum crisis in the United States during the early 1970's, trucking companies in Philadelphia singled out their older, predominantly black drivers with offers to become "commission drivers." Among the principal aspects of the change were that (a) the driver would no longer be paid on an hourly basis but would instead be compensated at a percentage of the profit and (b) the driver became responsible for his own vehicle, its fuel and its maintenance. On or about May 3, 1972, Jones' designation was changed from an hourly paid driver to that of a "Commission Driver". It was explained to him that all of the benefits of union membership would continue in full force and effect – including retirement pension benefits.

As of the time of the change in the Jones' designation to "Commission Driver", the Company ceased making contributions to the Fund on his behalf and began withholding sums of money from the commission payments that were otherwise payable to Jones. The withholdings from Jones commission were paid to the pension Fund

and ranged from approximately $2.60 per day to approximately $5.60 per day from May, 1972 until June, 1983, a period greater than eleven (11) years. It is admitted that all of the withheld money was paid to the Fund and was kept by the Fund.

Jones was not given any periodic report or notification of the status of his pension account during the entire period from 1955 to 1983. His contributions were made on the good faith belief that he would be entitled to a retirement pension. Throughout his working career, 1955 to 1983, Jones also participated in other Teamster benefit plans. Beginning in 1972 contributions were withheld from his commissions by the Company and paid to other Teamster benefit funds in a manner similar to that with Pension Fund.

In June, 1983 at the age of 62, Jones suffered a stroke, could no longer work, and therefore retired. He applied to the Fund for retirement pension benefits and after almost a year of investigation, the Fund representatives advised him that his pension claim was denied. The stated reason for the denial was that "commission drivers" are not members of the bargaining unit and, hence, cannot participate in the pension plan.

Jones appealed the denial through the Fund's administrative process. Among the steps in the Fund's administrative procedure, Jones was required to present his claim to an arbitrator.

The Fund's arbitrator decided that the period of contributions from 1955 through 1972 was not sufficient for vesting of Jones' pension rights. The arbitrator also held that the collective bargaining agreement between the

Company and Teamsters Local 513 did not have a classification for "Commission Driver" and, hence, Jones was not a member of the bargaining unit. Having been deemed not a member, Jones' application for pension was denied. Further, the arbitrator refused to return Jones' own contributions, citing *Crown, Cork and Seal Company v. Teamsters Pension Trust Fund of Philadelphia and Vicinity*, 549 F. Supp. 307 (E.D. Pa. 1982), aff'd 720 F. 2d 661 (3d Cir. 1983).

Having exhausted the administrative remedies, plaintiff Jones brought suit to enforce his right to a pension and, alternatively, to recover his own money that was paid to the Fund during the May 1972 to June 1983 period. His suit also alleges that older employees and blacks were singled out to be designated as commission drivers.

Since the time he became ill in 1983, Jones has become financially destitute and survives on public assistance.

Petitioner's Complaint was brought in the Eastern District of Pennsylvania. No Answers were filed. Instead, both the defendant Fund and the defendant Company filed motions to dismiss and for summary judgment.

The District Court granted summary judgement on the ERISA claim on the theory of res judicata. The District Court dismissed the state law claims on its analysis of federal preemption. The civil rights claims were dismissed on the analysis that conspiracies for economic purposes cannot be actionable. Judgment was entered dismissing the Complaint, with no leave to amend.

On appeal to the U.S. Court of Appeals for the Third Circuit, the Court declined to hear any oral argument and entered judgment based upon the District Court record. The defendant Fund motioned for publication of the court's order but same was denied. The present appeal followed.

REASONS WHY QUESTIONS PRESENTED ARE SUBSTANTIAL

A. The decision below is in conflict with the decisions of other United States Courts of Appeal which have held that a party seeking relief, pursuant to §403 of the Employee Retirement Income Securing Act as amended by the Multiemployer Pension Plan Amendment Act of 1980 (29 USC §1103(c)(2)(A)(ii), has a right to restitution of mistaken contributions when the equities favor it.

The case presented calls for an articulation of federal law governing the determination of a refund policy pursuant to ERISA and MPPAA.

The arbitrator denied Jones' pension application, and, relying on *Crown, Cork and Seal Company v. Teamsters Pension Trust Fund of Philadelphia and Vicinity*, 3EBC2398, 549 F. Supp 307 (E.D. Pa. 1982), *Aff'd without opinion* 720 F2d 661 (3d Cir. 1983). refused to return the contributions made from Jones' own pocket.

Crown Cork involved an *employer* contributor who instituted a declaratory judgment action to determine its rights to recover excess contributions it had mistakenly made to the defendant Fund. The U.S. District Court began its analysis by noting that the preamble of ERISA

"makes it apparent that in enacting ERISA congress' overriding concern was that employees with long years of employment and contributors are assured of receiving their pension benefits. 3 EBC at 2399. Because "the employer is in the best position to monitor the amount of its own contributions", 3 EBC at 2402, and "a right to restitution in favor of *employers* could severely undermine the funds' integrity" (*Id.*) (emphasis supplied), the court established a no refund policy. The language of the opinion, however is solely concerned where *employers* as plaintiffs, as distinguished from Jones' case where a *retiree* is the plaintiff.

The Tenth Circuit has held that it is an abuse of a trustee's discretion to deny a refund where there is no evidence that restitution would underfund the pension fund. *Peckham v. Board of Trustees of the International Bhd. of Painters and Allied Trade Union*, 719 F2d 1063, 1066, *modified and aff'd on rehrg* 724 F2d 100 (1983). Similarly, the Ninth Circuit has noted that without the private remedy implicit in §403(c)(2)(A)(ii), "the decision to return contributions mistakenly paid would be left solely in the interest trustee." *Award Services, Inc. v. N. Cal. Retail Clerks Union*, 763 F2d 1066, 1068 (1985), cert denied ___ US ___, 106 S Ct. 850, 88 LEd2d 490 (1986). *Award Services* relied in part on that circuit's earlier opinion in *Chase v. Trustees of Western Conference of Teamsters Pension Trust Fund*, 753 F2d 744 (1985), which involved a claim for restitution on the part of owner-drivers of taxicabs who were not the "employer" that made the contributions to the pension fund:

> [T]he owner-drivers will accrue no benefits under the plan, and in the absence of a remedy, their

> contributions would be forfeited. The critical question is whether refunding the owner-drivers' contribution would undermine the financial stability of the plan.

Chase, supra, 753 F2d at 753. Hence, the Ninth Circuit's "critical" questioning is, in the Third Circuit, replaced with a blind assumption in the absence of any evidence of resultant financial instability. *Crown Cork, supra,* 549 F. Supp 311-12.

The Fourth Circuit has likewise held that the district court should determine whether the claimant is entitled to refund on the basis of equitable principles, *Teamsters Local 639-Employers Health Trust v. Cassidy Trucking, Inc,* 646 F2d 865, 868 (1981), while the Second Circuit has concluded that such equitable principles mandate affirmance of an offset award where an employer's overpayments were made under a mistake of fact. *Dumac Forestry Service v. International Brotherhood of Electrical Workers,* 814 F2d 79, 81-82 (1987). The Sixth Circuit has also specifically recognized the validity of such claims of unjust enrichment. *Whitworth Brothers Storage Company v. Central States and Southwest Areas Pension Fund,* 794 F2d 221, 235-36 (1986).

The District Court of Minnesota (Eight Circuit), confronted with the argument that §1103 (c)(2)(A) permits a fund's trustees to decide whether to adopt a rule requiring the return of all mistakenly made payments for which timely application is made, noted:

> There is no support in the legislative history for this interpretation. Moreover, this interpretation also would render §1103(c)(2)(A) a nullity, for trustees would have little if any incentive to adopt such a rule if not required to do so.

U.M. Trucks, Inc. v. Central States, etc., 517 F. Supp. 1122, 1125 n 3 (1981). Thus, the fact issue existing as to whether equity required the return of payments precluded summary judgement. *Id. (See*, also, *Central States v. Wholesale Produce Supply Co.*, 470 F. Supp 884 (D Minn 1979), *aff'd* 611 F2d 694 (8th Cir 1979) – Court approved an employee's offset of overpaid contribution). The Southern District Court of Mississippi (5th Circuit) has, at least, acknowledged the application of equitable considerations, though in dicta. *Carpenters Local 1471 v. Bar-Con, Inc.*, 668 F Supp 560, 568 (1987).

Hence, it is respectfully submitted that the lower court's slavish adherence to *Crown Cork* can not be rationalized, neither in light of the clearly emerging trend in the cited jurisdictions which reach directly contrary conclusions; nor, in terms of the facts which underlie *Crown Cork*, to wit: a well-positioned *employer* fully capable of monitoring its contributions.

Finally, defendants argued, successfully, that the findings of the arbitrator, that is restitution refusal to appellant Jones, must be deemed final. The effect of arbitration was explored by this Honorable Court in a case involving an individual employee's right to a minimum wage and overtime pay pursuant to the Fair Labor Standards Act, 29 USC §201 et seq:

> ***FLSA rights can not be abridged by contract or otherwise waived because this would "nullify the purposes" of the statute and thwart the legislative policies it was designed to effectuate . . . Moreover, we have held that congressionally granted FLSA right take precedence over conflicting provisions in a collectively bargained compensation arrangement
>
> ***

> ***Because the "specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land," many arbitrators may not be conversant with the public law considerations underlying the FLSA.
>
> ***
>
> ***Because the arbitrator is required to effectuate the intent of the parties, rather than to enforce the statute, he may issue a ruling that is inimical to the public policies underlying the FLSA, thus depriving an employee of protected statutory rights.

Barrentine v. Arkansas-Best Freight System, 450 US 728,742-746, 101 S Ct 1437, 1445-1447, 67 LEd2d 641 (1981) (citation and footnotes omitted throughout). For these reasons, this court held that a prior submission of the controversy to arbitration will not bar the litigation of petitioner's claim in a judicial forum. With respect to the public policy consideration, it is abundantly clear that "in enacting ERISA Congress' overriding concern was that employees with long years of employment and contributions are assured of receiving their pension benefits." *Crown Cork, supra.* Therefore, the arbitration determination relative to William Jones is not *res judicata* for an ERISA claim. *(See* also, *Amaro v. Continental Can Co.* 724 F2d 747, 749-750 (9th Cir. 1984).

The situation in which Mr. Jones finds himself is abhorrent, and becomes even more egregious given "the differences in the rules governing access to federal court for the purpose of pressing a claim under ERISA." *John Mason v. Continental Group, Inc,* 474 US 1087, 106 S Ct 863, 88 LEd2d 902 (1986) – dissent from denial of cert., J. White and Brennan stated:

> The increasing significance of ERISA litigation is apparent from the growing number of such cases that

> appear on our docket; in a field so productive of federal litigation, the need for clear procedural rules governing access to the federal courts is imperative. Moreover, because the coverage of particular ERISA plans frequently extends to beneficiaries in more than one State-and, no doubt, in more than one judicial circuit-differences in the rules governing access to federal court for the purpose of pressing a claim under ERISA may have the troubling effect of encouraging forum-shopping by plaintiffs. Accordingly, the conflict among the Circuits over the issue of an exhaustion requirement under ERISA can hardly be passed over as an unimportant one unworthy of this Court's attention."

ID.

The aforedescribed of the readily acknowledged purpose of ERISA, cannot be tolerated. Petitioner respectfully submits that the question is, indeed, worthy of this Honorable Court's attention. The questions submitted are very substantial.

B. The lower court decision will affect a large number of truck drivers whose number could create a large class of indigent senior citizens.

During the early 1970's, the country saw unprecedented increases in petroleum-based fuel costs and vehicle expenses. Transportation companies, with the assent and cooperation of their unions, created a category of "commission drivers" and minimized costs to the companies. The unions continued to receive checkoffs for dues and union benefits based upon the number of hours reported weekly by the company to have been worked by the "commission drivers." The weekly reports for hours worked with respect to the "commission drivers" were

included with the same reports for those of hourly paid drivers. The rates for checkoffs were the same for each group.

Typically, the "commission drivers" were the older, and predominantly black drivers. Today, the early groups of them are coming up for retirement only to discover that their pension contributions over the years went for nothing.

William Jones is one of the first of the "commission drivers" to retire. Other commission drivers are continuing to make contributions to the Teamsters Pension Fund in addition to union dues and other contributions. All of them are innocent victims who have and will learn, after its too late, that they have no retirement pension at all. They might be the next, and perhaps, largest single group of American senior citizens to become public wards.

William Jones' story is one that would affect the sensibilities of even the most callous citizen. Here is a man who faithfully followed the American ethic. He worked hard throughout his healthy years; he devoted his youth and energy doing his best at what he knew; and he planned and prepared for his twilight years by making good faith regular payments into the pension fund. Now when he is too old, too poor and too late to do anything about it, he is faced with the dilemma of neither getting a retirement pension nor getting a refund of his own money. Through no fault of his own, and despite his good faith efforts to avoid it, Jones is condemned to spend the rest of his life in poverty and on welfare. The fundamental unfairness of that result cannot be ignored. Why should William Jones suffer so, while the Teamster Fund

– which did nothing over the years to alert Jones or the Company of an eligibility question – be allowed a windfall. It strains credulity to conclude that Congress intended such an unfair result.

C. Manifest injustice results to retirees who are in the worst position to protect themselves and obtain a retirement pension.

The legal issues in this case involve intricate issues and arguments regarding federal preemption, statutory construction, exhaustion of remedies, res judicata, contract interpretation and jurisdiction. Trucking company employers, their unions and their pension trust funds are invariably represented by counsel who advise them on an ongoing basis regarding their rights, risks and remedies. On the other hand, truck drivers, such as William Jones and typically workers who have little education, little sophistication in dealing with the vagaries of the Teamsters Pension Fund and rely on the advice given by their union, by the Fund administrators and by their employers.

Over the period of almost thirty (30) years, neither the employer, the Pension fund nor the union reported to William Jones on the status of his pension, whether vested or not.

Jones' rights arise from the ERISA law, particularly 29 U.S.C. 1001(c) which declares the statutory policy of protecting "participants . . . and their beneficiaries" who have "significant periods of services . . . " There can be no question that Jones' years of contribution of the pension

fund – the latest 11 years out of his own money – is the very situation that ERISA was enacted to protect.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JONES, WILLIAM

vs.

CIVIL ACTION

SCHAFFER, CHARLES J., JR., et al.

86-3733

MEMORANDUM – ORDER

This civil action charges defendants, the Trustees of the Teamsters Pension Trust Fund of Philadelphia and Vicinity, the Administrator thereof (collectively the "Fund"), and Crossman's Van and Storage Company, Inc. ("Crossman") with violations of federal and state law based upon the denial to plaintiff of a pension or the return of his contribution made to the Fund. The federal claims alleged are violations of the Employee Retirement Income Security Act, 29 U.S.C. § 1132 ("ERISA"), Count III; the Civil Rights Act of 1871, 42 U.S.C. §§ 1985(3) and 1986, Counts IV and V; and the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. 1964 ("RICO"), Count II. By stipulation the RICO claim has been dismissed.[1] The Pennsylvania state law claims allegedly are based upon "unlawful conversation", Count I; violation of the Pennsylvania Wage Payment and Collection law, Count VI; common law fraud, Count VII; common law conspiracy, Count VIII, and intentional infliction of

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[1] The same stipulation also dismissed all claims against E. Crossman Hall, individually as President of Crossman's Van and Storage Co.

emotional distress, Count IX. Count X demands punitive damages.

The Fund defendants and Crossman have moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b) (6) or for summary judgment pursuant to Fed. R. Civ. P. 56. Plaintiff opposes the motions.

I.

Factual Background

The Fund is a multiemployer benefit plan established pursuant to § 302(c) (5) of the Labor Management Relations Act, 29 U.S.C. § 186(c) (5) and §§ 3(2), (3) and (37) of ERISA, 29 U.S.C. § 1002(2), (3) and (37). Crossman, an employer, makes periodic contributions to the Fund on behalf of certain of its drivers pursuant to a collective bargaining agreement with Teamster Local 513. Jones was a member of Local 513 and a driver for Crossman from 1955 until approximately June of 1983 when he retired because of illness. The company made contributions to the fund pursuant to a collective bargaining agreement between 1955 and 1972. In 1972, plaintiff was classified a "commission driver". Thereafter, Crossman pursuant to Jones' authorization deducted sums from Jones' commission payments and forwarded the same to the Fund. On retirement, plaintiff applied to the Fund for a pension. The Fund in verifying Jones' work history discovered the change of work status from driver to "commission driver". The Fund administrator determined that the collective bargaining agreement between Local 513 and Crossman did not include in the bargaining unit drivers compensated on a percent commission basis. Therefore,

the administrator denied Jones' pension application, and refused to return his contributions. As was his right under the Pension Plan, Jones appealed the administrator's decision to the Trustees. An evidentiary hearing was granted to Jones at which he was represented by counsel. Counsel argued that Jones in good faith believed that the contributions made to the Fund by deductions from his commissions entitled him to pension benefits. Alternatively, he argued that the money paid into the Fund should be reimbursed with interest. The Trustees rejected both arguments; they adopted the Administrator's position that the change in status from driver to commission driver removed plaintiff as a member of the bargaining unit. They also found that Jones' term of employment solely as a driver was insufficient to vest pension rights. Also, the Trustees rejected the claim for return of the funds contributed electing to apply to Jones the no return to employer policy judicially approved in *Crown Cork & Seal, Co. v. Teamsters Pension Trust Fund of Philadelphia and Vicinity*, 549 F. Supp. 307 (E.D. Pa, 1982), *aff'd*, 720 F.2d 661 (3d Cir. 1983). In *Crown Cork* an employer was denied recovery of contributions mistakenly made to a fund, notwithstanding the good faith of the employer. Counsel for Jones elected to submit the dispute to the American Arbitration Association ("AAA") as authorized by Article V of the Fund's Pension Plan. Article V, Section I of the Plan provides in pertinent part:

> If the Participant or beneficiary is dissatisfied with the written decision of the Trustees, he shall have the right to appeal the matter to arbitration in accordance with the labor arbitration rules of the American Arbitration Association, provided that he submitted a request for arbitration to the Board of

> Trustees, in writing, within sixty (60) days of receipt of the written decision.
>
> The question for the arbitrator shall be whether, in the particular instance, the Trustees (1) were in error upon an issue of law, (2) acted arbitrarily or capriciously in the exercise of their discretion, or (3) whether their findings of fact were supported by substantial evidence.
>
> . . .The decision of the arbitrator shall be final and binding upon the Trustees and upon the appealing party.
>
> The procedure specified in this section shall be the sole and exclusive procedures available to a Participant or beneficiary of a Participant who is dissatisfied with an eligibility determination, or benefit award, or who is otherwise adversely affected by any action of the Trustees.

The arbitration submission form named Mr. Jones' former employer, the Administrator and the Trustees as parties.

Mr. Jones, represented by counsel, appeared and participated in the arbitration hearing. After hearing, the arbitrator stated in his analysis that:

> Mr. Jones believed he was contributing appropriately and in good faith to the Pension Plan. He acknowledged his status as a commission driver and argued this did not make him different from other persons who participated in the pension program. He is not correct. Covered employees do not pay their own Social Security. They do receive vacations and holidays and the employer, not the individual makes the contribution to the Plan. Mr. Jones receives none of the benefits enumerated. The Plan was established for individuals who are employees and he is not an employee.

Arbitrator's Award, p. 6.

Also, the arbitrator considered the Trustees reliance on *Crown Cork, supra,* and concluded, "[F]or the Plan to act in a different manner in another instance would open the Trustees to a charge of arbitrary and capricious action." Accordingly, he denied the appeal finding that:

> (1) The Trustees were not in error upon an issue of Law.
> (2) The Trustees did not act in an arbitrary or capricious manner in the exercise of their discretion.
> (3) The Trustees findings of fact were supported by substantial evidence.

II.

The undisputed factual background and procedural history mandate that I grant the motions of defendants. As to the federal claims, plaintiff has voluntarily withdrawn the RICO claim. Counts IV and V of the complaint, which purport to set forth causes of actions pursuant to 42 U.S.C. §§ 1985(3) and 1986, must also be dismissed. The § 1985(3) claim alleges a conspiracy by defendants to drain and deplete the finances of plaintiff and commissioned drivers who are not part of the bargaining unit.[2]

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[2] Paragraphs 29, 30 and 31 allege the following:

> 29. Since May, 1972, by reason of an unlawful conspiracy plan, plot enterprise and scheme to drain and deplete the finances of plaintiff, defendants have wrongfully taken great sums of plaintiff's money aggregating many thousands of dollars.
>
> 30. Defendants have engaged in an unlawful conspiracy, enterprise and combination to dupe and trick plaintiff into making contributions to the Fund. The said conspiracy, enterprise, and combination was an

(Continued on following page)

In *United Brotherhood of Carpenters and Joiners v. Scott*, 463 U.S. 825 (1983), the Supreme Court construed § 1985(3) not to reach conspiracies motivated by bias towards others on account of their economic views, status or activities. *Id.* at 839.

"Because transgressions of § 1986 by definition depend on a preexisting violation of § 1985, if the claimant does not set forth a cause of action under the latter, its claim under the former necessarily must fail also." *Rogin v. Bensalem Township*, 616 F.2d 680, 696 (3d Cir. 1980), *cert. denied*, 450 U.S. 1029 (1981). Thus, I must dismiss Counts IV and V.[3]

(Continued from previous page)

invidious discrimination against drivers who became "Commission drivers".

31. Defendants each and every one of them, having knowledge of the wrongs being done to plaintiffs, and having the power and authority to prevent or stop the commission of the wrongs, have neglected and wilfully refused to act in preventing, or stopping the wrongs being done.

[3] I note that in an affidavit attached to his answer to the pending motions, William Jones states that he is over forty years of age and that commissioned drivers are predominantly of the black race. The plaintiff argues that these allegations set forth in the affidavit are sufficient to identify classes of individuals protected under section 1985(3). The statements contained in the affidavit are not part of the allegations of the complaint and accordingly the motions to dismiss Counts IV and V, as these counts are presently stated, must be granted. The record does not disclose any basis for amendment of the complaint since it does not appear that any action taken by the

(Continued on following page)

Defendants' move to dismiss the state law causes of action on the ground that the claims are preempted by the provisions of ERISA. In *Pilot Life Insurance Co. v. DeDeaux*, 107 S. Ct. 1549 (1987), the Supreme Court held that ERISA preempts state common law tort and contract actions asserting improper processing of a claim for benefits under an insured employee benefit plan. The detailed provisions of § 502(a) set forth the exclusive comprehensive civil enforcement scheme. Accordingly, I must dismiss the state law claims set out in Counts VI to X of plaintiff's complaint because they relate to the employee pension benefit plan.

The motions to dismiss plaintiff's federal ERISA claims focus upon the procedural history of this case that defendants argue bars the claim. Plaintiff has unsuccessfully presented his claims to the Administrator, the Trustees, and an arbitrator. The complaint sets forth a cause of action under ERISA and is not subject to dismissal on motion of defendants. However, alternatively, defendants move for summary judgment. The summary judgment motion record includes the administrative record developed in plaintiff's attempt to administratively recover pension benefits or a return of his contribution. Defendants' motions are grounded on the contention that plaintiff's ERISA claims are barred by the

---

(Continued from previous page)

Fund was directed at Mr. Jones because he was a commissioned driver. The record discloses that he was denied benefits because he was not a member of the bargaining unit described in the collective bargaining agreement.

doctrine of *res judicata*. Clearly, Jones is seeking to relitigate in this action claims decided against him by the arbitrator. Plaintiff was not required to exhaust administrative remedies; however, he voluntarily initiated the administrative proceedings. The Trust Fund Pension Plan and the American Arbitration Association submission expressly provide for the finality of the arbitrator's award. Although plaintiff was not required to pursue arbitration before filing this suit, the ERISA cause of action is barred under the doctrine of *res judicata* by the final arbitration award. *Delaney v. Union Carbide Corp.*, 749 F.2d 17 (8th Cir. 1984); *Wilson v. Fischer & Porter Co. Pension Plan*, 551 F. Supp. 593 (E.D. Pa. 1982).

Also, plaintiff argues that summary judgment should not be entered on the basis of *res judicata* because he is neither a beneficiary nor participant under the Plan. Thus, he contends that he is free to challenge the authority of the arbitration award. As the Third Circuit recently observed, where a party voluntarily submits a dispute to arbitration, he is bound by the award where his statements and conduct manifests a clear intent to arbitrate. *Teamsters Local Union No. 764 v. J.H. Merritt & Co.*, 770 F.2d 40 (3d Cir. 1985). Mr. Jones through counsel initiated the arbitration proceeding and submitted both his claim for benefits or for return of his contribution to the arbitrator; thus, he is bound by the award.

Finally, plaintiff has not made a showing that the Trustees decision to follow a uniform policy of no return of good faith contributions is arbitrary or capricious. The no return policy is based upon a decision of this court, *Crown Cork, supra*, affirmed by the court of appeals. It has been consistently applied by courts and arbitrators in this

district. It is related to a valid plan purpose and is not contrary to the plain language of the plan. As the Court of Appeals recently stated in *Gaines v. Amalgamated Ins. Fund*, 753 F.2d 288, 289 (3d Cir. 1985):

> A plan interpretation should be upheld even if the court disagrees with it, so long as the interpretation is rationally related to a valid plan purpose and not contrary to the plain language of the plan. *See Miles v. New York State Teamsters Conference Pension and Retirement Fund Employee Pension Benefit Plan*, 698 F.2d 593, 601 (2d Cir.), *cert. denied* ___ U.S. ___, 104 S. Ct. 105, 78 L.Ed. 2d 108 (1983).

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JONES, WILLIAM

vs. CIVIL ACTION

SCHAFFER, CHARLES J., JR., et al. NO. 86-3733

ORDER

(Filed Aug 11, 1987)

AND NOW, this 4th day of August, 1987, IT IS ORDERED that the motion of defendants to dismiss the causes of action alleged in Count I and Counts IV to X are GRANTED. IT IS FURTHER ORDERED that defendants'

motions to dismiss Count III are DENIED. IT IS FURTHER ORDERED that defendants' motions for summary judgment as to Count III are GRANTED.

BY THE COURT:

/s/ Clifford Scott Green
CLIFFORD SCOTT GREEN, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JONES, WILLIAM

vs.

SCHAFFER, CHARLES J., JR., et al.

CIVIL ACTION

NO. 86-3733

JUDGMENT

(Filed Aug 11, 1987)

AND NOW, this 4th day of August, 1987, judgment is entered in favor of defendants and against plaintiff.

BY THE COURT:

/s/ Clifford Scott Green
CLIFFORD SCOTT GREEN, J.

Exhibit A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-1533

WILLIAM JONES

Appellant,

vs.

CHARLES J. SCHAFFER, JR., Individually and as Administrator of the Teamsters Pension Trust Fund of Philadelphia and Vicinity and WILLIAM LEMON, VINCENT DAGEN FREDERICK W. FOX, JR., JOSEPH CIMINO, PETER P. COYLE and PAUL CARDULLO, Trustees of the Teamsters Pension Trust Fund of Philadelphia and Vicinity and E. CROSSMAN HALL, Individually and as President of Crossman's Van and Storage Company, Inc. and CROSSMAN'S VAN AND STORAGE COMPANY, INC.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 86-3733)
(Honorable Clifford Scott Green)

Submitted Under Third Circuit Rule 12(6)
February 23, 1988

Before: BECKER, HUTCHINSON and SCIRICA,
Circuit Judges

(Filed Mar 25, 1988)

MEMORANDUM OPINION

SCIRICA, *Circuit Judge.*

In this appeal, the primary issue is whether the district court properly granted summary judgment for defendant-appellees on plaintiff-appellant Jones' claims under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 - 1461 (1982).

The underlying facts are essentially undisputed. For twenty-eight years, Jones was a driver for appellee Crossman's Van and Storage Company (Crossman's), and a member of Teamsters Local Union 513. Between 1955 and 1972, Jones was paid on an hourly basis. Pursuant to a collective bargaining agreement, Crossman's made regular payments to the Teamsters Pension Trust Fund of Philadelphia and Vicinity (Fund) on behalf of Jones. In 1972, Jones became a "commission driver": he no longer received an hourly rate, but was paid a commission on each job performed. As a consequence, Crossman's stopped contributing its own money to the Fund on behalf of Jones. Instead, with Jones' authorization, Crossman's thereafter made contributions to the Fund with Jones' money, withheld from his commissions.

Apparently, the Fund did not learn of this arrangement until eleven years later, when Jones retired and applied for a pension. After investigating Jones' work history, the Fund discovered that Jones was a commission driver from 1972 until retirement in 1983. The Fund administrator, appellee Schaffer, denied Jones' request, because as a commission driver, he was not part of the bargaining unit. Jones appealed to the Trustees of the Fund. The Trustees affirmed Schaffer's denial and

rejected Jones' claim for the money that Crossman's withheld from his commissions and paid to the Fund on his behalf. Their decision was based on the Fund's policy of not returning good-faith contributions paid by mistake.

Jones then submitted his claim to the American Arbitration Association, naming as parties Schaffer, the Trustees, and Crossman's. After an evidentiary hearing where Jones appeared with counsel and participated, the arbitrator found that as a commissioned driver, Jones was not a participant in the pension plan. The arbitrator denied Jones the pension and refused to require the Fund to return contributions made on his behalf while he was a commissioned driver. Jones then filed suit in district court.

The district court granted defendants' motion for summary judgment on Jones' ERISA claims, finding them res judicata because they were litigated at arbitration. The court found the arbitrator's decision was final. The court also determined that the arbitrator's decision denying the return of contributions made to the Fund between 1972 and 1983 was not arbitrary and capricious because the Fund's "no return" policy is based upon the decision in *Crown Cork & Seal Co. v. Teamsters Pension Trust Fund of Philadelphia and Vicinity*, 549 F. Supp. 307 (E.D. Pa. 1982), *aff'd* 720 F.2d 661 (3d Cir. 1983). In addition, the district court dismissed Jones' claims that alleged violations of 42 U.S.C. §§ 1985 and 1986, and pendent state-law claims.

Discussion

The key issue is whether the district court properly granted summary judgment in favor of defendant on

plaintiffs' ERISA claims. Our review is plenary. *Sorba v. Pennsylvania Drilling Co.*, 821 F.2d 200, 203 (3d Cir. 1987), *cert. denied*, 108 S.Ct. 730 (1988).

We conclude that summary judgment was proper. The arbitrator's decision that Jones is entitled neither to a pension nor to return of contributions made to the Fund from 1972 to 1983 cannot be relitigated in the district court. In *Teamsters Local Union v. J.H. Merritt & Co.*, 770 F.2d 40 (3d Cir. 1985), we held that a party who voluntarily participates in arbitration is bound by the arbitrator's decision. Jones, like the employer in *Merritt*, voluntarily submitted to arbitration his claim for a pension, or in the alternative, for return of certain contributions made to the Fund, naming as parties the Trustees of the Fund, Schaffer (the administrator), and Crossman's. *See* Appellant's Br. at 10-11. Jones is bound by the arbitrator's decision.[1] *Accord Delaney v. Union Carbide Corp.*, 749 F.2d 17, 18-19 (8th Cir. 1984). He had a full and fair opportunity to litigate his claims before the arbitrator against all of the parties named in this complaint. The claims raised in this action were identical to those raised in arbitration. Furthermore, Jones was represented by counsel at the evidentiary hearing. *See Montana v. United States*, 440 U.S. 147, 153-54 (1979).

---

[1] Although *Merritt* involved enforcement of an arbitration award against an employer by the union, rather than against an individual employee like Jones, it is nonetheless applicable to this case. *See Griesmann v. Chemical Leaman Tank Lines, Inc.*, 776 F.2d 66, 72-73 & n. 11 (3d Cir. 1985) (recognizing that grievance committee decision, review of which is the same as for arbitration proceedings, is binding on *employees* who submitted to that procedure).

Jones contends that some issues were neither submitted to nor considered by the arbitrator – for example, that the Trustees did not perform their duty to periodically inform Jones of his status under the pension plan. Because Jones could have raised those issues at arbitration, he is precluded from raising them in a subsequent action. *Allen v. McCurry*, 449 U.S. 90 (1980) ("[R]es judicata . . . precludes the parties . . . from relitigating issues that were or could have been raised in . . . [a previous] action." *Id.* at 94.). *See also Merritt*, 770 F.2d at 42 (party waives its right to raise on appeal an objection to arbitrator's decision when the party failed to raise the objection before the arbitrator).

Jones also contends that the right to litigate a statutory claim in court, like his ERISA claim, cannot be waived by prior submission to arbitration. We disagree. Arbitration is binding even for statutory claims. In *Shearson/American Express, Inc. v. McMahon*, 107 S.Ct. 2332 (1987), the Court held arbitration agreements non-binding only where Congress, through statutory text or legislative history, prohibits waiver of a judicial forum. *Id.* at 2337. ERISA evidences no such congressional intent. In *Grossmuller v. International Union*, 715 F.2d 853 (3d Cir. 1983), we recognized that the legislative history of ERISA illustrates Congress' intent to encourage internal dispute resolution (including arbitration), with minimal resort to courts. *Id.* at 856-57 & n. 3. Therefore, the existence of an ERISA claim does not obviate the binding nature of the arbitrator's decision. *See Delaney*, 749 F.2d at 18-19.

Finally, we conclude that the arbitrator's decision denying either a pension or return of contributions was not arbitrary and capricious. In *Crown Cork*, the court

refused to require the Fund to return to an employer contributions mistakenly made to the Fund. The court found that to do otherwise would violate the underlying purpose of ERISA, which is to protect the integrity of pension funds for the benefit of employees and their beneficiaries: requiring repayment, even of mistaken contributions, would affect the stability and integrity of pension funds. 549 F. Supp. at 311-12. Although in *Crown Cork* the court denied repayment to an employer rather than to an employee, its rationale also applies here. Repayments to individual employees, as well as to employers, can affect the integrity and stability of pension funds. Therefore, we will affirm the district court's grant of summary judgment for defendants on Jones' ERISA claims.

We have considered the other issues raised on appeal by Jones, *i.e.* that the district court erred by dismissing Jones claims under the Civil Rights Act of 1871 and his state law claims, and conclude that dismissal was proper. Therefore, we will affirm the district court's dismissal of those claims.

TO THE CLERK:

Please file the foregoing opinion.

/s/ A. J. Scirica
Circuit Judge

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William Jones
Petitioner

vs.

Charles Schaffer, et al

U.S. COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-1533

NOTICE OF APPEAL

Notice is hereby given that William Jones, hereby appeals to the United States Supreme Court from the final judgment entered in this action on the 25th day of March 1988.

/s/ Roland J. Atkins
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June 17, 1988

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William Jones
Petitioner

vs.

Charles Schaffer, et al

U.S. COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-1533

CERTIFICATE OF SERVICE

I, Roland J. Atkins, Esquire hereby certify that on the 17th day June 1988, I mailed by first class mail postage prepaid copies of the Notice of Appeal to the following:

Frank Sabatino, Esquire
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/s/ Roland J. Atkins
ROLAND J. ATKINS, ESQUIRE

42 U.S.C. 1985 Conspiracy to interfere with civil rights.

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

---

42 U.S.C. 1986 Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons

guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

Supreme Court, U.S.
FILED
SEP 8 1988
JOSEPH F. SPANIOL, JR.
CLERK

(2)

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1987

No. 87-2110

WILLIAM JONES,

Appellant

v.

CHARLES J. SCHAFFER, JR., Individually and as Administrator of the Teamsters Pension Trust Fund of Philadelphia and Vicinity
and
WILLIAM LEMON, VINCENT DAGEN FREDERICK W. FOX, JR., JOSEPH CIMINO, PETER P. COYLE and PAUL CARDULLO, Trustees of the Teamsters Pension Trust Fund of Philadelphia and Vicinity
and
CROSSMAN'S VAN AND STORAGE COMPANY, INC.

On Appeal from the United States Court of Appeals for the Third Circuit

MOTION TO DISMISS OR AFFIRM OR, IN THE ALTERNATIVE, BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI, FILED ON BEHALF OF CHARLES J. SCHAFFER, JR., WILLIAM LEMON, VINCENT DAGEN, FREDERICK W. FOX, JR., JOSEPH CIMINO, PETER P. COYLE, AND PAUL CARDULLO

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STATEMENT

Introduction

William Jones is presenting claims to this Court which have been successively rejected by: (1) the Trustees of the Teamsters Pension Trust Fund of Philadelphia & Vicinity ("Fund") (App. 12-13);[1] (2) an arbitrator selected under the auspices of the American Arbitration Association ("AAA") (App. 13); (3) United States District Judge Clifford Scott Green (Pet. App. 1-10); and (4) the United States Court of Appeals for the Third Circuit (App. 11-18). Thus, this Court is the fifth forum to consider the theories asserted against the Fund.

Jones is apparently confused as to the basis for jurisdiction in this Court. Page 3 of his self-styled "Jurisdictional Statement" asserts *both* that "[t]he present appeal is taken as a matter of right" and that "[j]urisdiction of this Court to review this case on petition for certiorari rests upon 28 U.S.C. §1254(1.)" No attempt is made to reconcile these contradictory claims. Nevertheless, the Court should decline to review the case, regardless of whether Jones is considered to be seeking relief by appeal or petition for a writ of certiorari.

Factual History

The Fund is a multiemployer benefit plan established pursuant to § 302(c)(5) of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 186(c)(5), and § 3(2), (3) and (37) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(2), (3) and (37) (App. 2). As such, the Fund is governed by Trustees appointed in equal numbers by management and labor who owe their exclusive fiduciary obligation to the Fund's participants and beneficiaries. *See NLRB v. Amax Coal Co.*, 453 U.S. 322 (1981). The Fund is financed through contributions made by various employers pursuant to collective bargaining agreements with individual local unions. Section 302(c) (5) of the LMRA precludes the Fund from paying benefits

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1. All such citations are to the Appendix contained in the "Jurisdictional Statement."

to anyone other than employees (or family members or dependents of employees) who work in such bargaining units. *Walsh v. Schlecht*, 429 U.S. 401, 407 (1977).

Jones first went to work for Crossman's Van and Storage Co., Inc. ("Crossman Co.") as a truck-driver in 1955 employed in a bargaining unit represented by a Teamsters local union (App. 2). While employed in the bargaining unit, Jones' compensation and working conditions were, by law, governed by the operative collective bargaining agreements. For example, Crossman Co. compensated Jones on an hourly basis, paid his Social Security taxes, compensated him for vacations and holidays, and contributed on his behalf to the Fund (App. 4, 12).

Jones remained in the bargaining unit until 1972, when he entered into a private agreement with Crossman Co. pursuant to which he became a "commission driver," or independent contractor. Under this new arrangement, the terms and conditions of his employment were no longer regulated by the collective bargaining agreement. Rather, Jones received a commission for each shipment he transported for Crossman Co. (App. 12).

According to Jones' "Jurisdictional Statement," the change in status from bargaining unit member to commission driver was part of a nationwide conspiracy between transportation companies and unions to defray "petroleum-based fuel costs and vehicle expenses" (Jurisdictional Statement at 12-13). Nothing in the record supports this gratuitous allegation, which Jones never even mentioned, let alone substantiated, during any of the proceedings below. Yet the point is irrelevant, because the Fund is neither a union nor Jones' employer, but an independent trust fund which did not sanction or know of Jones' arrangement with Crossman Co.

The reason for the Fund's lack of knowledge is also undisputed. When Jones left the bargaining unit, Crossman Co. ceased making contributions to the Fund on his behalf. After that time, Jones made the contributions himself. The Fund cannot accept such contributions, because participation is limited to members of bargaining units whose employers contribute on their behalf pursuant to written labor agreements. To circumvent this problem, Crossman Co. and Jones devised a

scheme to make the payments on his behalf surreptitiously. With Jones' authorization, Crossman Co. deducted from Jones' commissions the money which Jones intended to invest in the Fund. Crossman Co. then forwarded these payments to the Fund, together with the contributions it made on behalf of its regular employees, and reported to the Fund that Jones was a member of the bargaining unit (App. 2, 11).

The Fund did not learn of the misrepresentation until Jones applied for his pension. Administrator Schaffer uncovered the facts while verifying Jones' employment history (App. 2, 12-13). There has never been any allegation, much less proof, that the Fund could have discovered this misrepresentation sooner, or that Jones was denied any rights under the reporting and disclosure provisions of ERISA. Furthermore, there is no dispute that the terms of the Fund's Pension Plan rendered Jones ineligible for benefits once it was established that Jones ceased being a member of the bargaining unit in 1972.

Procedural History

The administrative procedure which culminated in this litigation began on October 18, 1984, when the Fund's Administrator ruled that Jones was ineligible for a pension (App. 12). Jones then appealed to the Fund's Trustees (App. 3). On June 5, 1985, an appeals panel consisting of Trustees William Lemon and Peter P. Coyle met to consider the appeal. Jones was represented by counsel who presented evidence and argument to support the appeal. Jones requested two alternative forms of relief, *viz.*, a full pension or restitution of the payments which Jones made to the Fund on his own behalf (App. 3). Trustees Lemon and Coyle subsequently issued a written opinion which rejected both of these claims.

Pursuant to Article V, § I of the Fund's Pension Plan, Jones then appealed the Trustees' decision to binding arbitration under the auspices of the AAA (App. 3-4).[2] The arbitrator held

---

2. Article V § I is very specific in providing that arbitration under the clause is binding. The relevant language of the section states:

> If the Participant or beneficiary is dissatisfied with the written

an evidentiary hearing at which Jones was represented by counsel who again requested either a full pension or restitution of Jones' payments. The arbitrator's opinion, issued on May 5, 1986, denied all of Jones' claims (App. 4-5).

Jones then initiated this litigation. The original complaint contained ten counts which set forth claims under the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. §§ 1864, *et seq*. ("RICO"); ERISA; the Civil Rights Act of 1871; 42 U.S.C. §§ 1985(3) and 1986; the Pennsylvania Wage Payment Collection Law, 43 Pa.C.S.A. §§ 260.1, *et seq*.; and state common law theories of conversion, fraud, conspiracy, intentional infliction of emotional distress, and "punitive/exemplary damages" (App. 1-2). Defendants included the Fund's Administrator and Trustees, Crossman Co., and Ms. E. Crossman Hall. The RICO count was dismissed by stipulation of counsel, as were the individual claims against Ms. Hall (App. 1).

Judge Green issued an opinion on August 4, 1987, which granted defendants summary judgment with respect to the ERISA claims and dismissed all of Jones' remaining allegations for failure to state a claim upon which relief can be granted (App. 1-10). The United States Court of Appeals for the Third Circuit unanimously affirmed on March 25, 1988 (App. 11-17). Jones then filed this appeal. Appellees affiliated with the Fund submit the instant brief urging this Court to affirm the order of the district court.[3]

NOTES *(Continued)*

> decision of the Trustees, he shall have the right to appeal the matter to arbitration in accordance with the labor arbitration rules of the American Arbitration Association, provided that he submitted a request for arbitration to the Board of Trustees, in writing, within sixty (60) days of receipt of the written decision.
>
> . . . *The decision of the arbitrator shall be final and finding upon the Trustees and upon the appealing party*.

(App. 3-4, emphasis added).

3. This brief is submitted on behalf of the fiduciaries affiliated with the Fund: Charles J. Schaffer, Jr., the Fund's Administrator, and Trustees William Lemon, Vincent Dagen, Frederick W. Fox, Jr., Joseph Cimino, Peter P. Coyle, and Paul Cardullo. Mr. Fox has resigned as a Trustee since the initiation of this litigation.

SUMMARY OF ARGUMENT

The Court should dismiss this appeal for lack of subject matter jurisdiction. The Court of Appeals' opinion did not invalidate a state statute. Therefore, this Court does not have appellate jurisdiction.

If the Court does find that it has appellate jurisdiction, then the decision of the Court of Appeals should be summarily affirmed. Jones' claims under ERISA are barred by the preclusive effect of the arbitration award. Alternatively, Jones' plea for restitution lacks merit, because: (1) no such remedy exists under ERISA, (2) if such a remedy did exist, the equities of the case would preclude relief, and (3) if relief were appropriate, the recovery should only be granted against Crossman Co., which caused and benefited from any injury suffered by Jones. The claims under 42 U.S.C. §§ 1985(3) and 1986 fail, because Jones has not accused the defendants of discriminating against a group protected by these statutes. Jones' state law theories are preempted by ERISA.

Finally, if the Court elects to consider the "Jurisdictional Statement" as a petition for writ of certiorari, then the petition should be denied. The decision of the Court of Appeals was clearly correct. Perhaps more significantly, the Court of Appeals declined to publish its opinion. The Internal Operating Rules of the Third Circuit clearly establish that an unpublished opinion does not constitute a binding precedent. Therefore, the instant case is of no interest to anyone other than the parties, and does not, in any event, deserve this Court's attention.

ARGUMENT

I. THE APPEAL SHOULD BE DISMISSED FOR LACK OF JURISDICTION.

According to 28 U.S.C. § 1254(2), this Court has appellate jurisdiction in cases where the appellant relies "on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States." Section 1254(2) is construed strictly, with doubtful situations resolved

against appellate jurisdiction. *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 43 (1983). Consistent with this principle of strict construction, § 1254(2) will not provide jurisdiction unless the state statute in question was specifically raised and "expressly" invalidated in the opinion under review. *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 247 (1984).

The legal arguments contained in the instant Jurisdictional Statement are based exclusively upon ERISA, a federal statute, the validity of which is not in question (Jurisdictional Statement at 7-13). At no point does Jones claim that he deserves relief under a state statute which the Court of Appeals held "repugnant" to federal law. This, alone, requires dismissal of the instant appeal.

The fact that Jones included the Pennsylvania Wage Payment Collection Law, 43 Pa. C.S.A §§ 260.1, *et seq.* ("WPCL"), among the state law claims that were unsuccessfully asserted before the District Court does not support appellate jurisdiction. Jones did not specifically discuss the constitutionality of the WPCL in his brief to the Third Circuit, and the Court of Appeals did not even mention the statute in its opinion. The only indirect reference to the preemption issue in the Court of Appeals' decision consisted of the following sentence: "We have considered the other issues raised on appeal by Jones, *i.e.*, that the district court erred by dismissing Jones' claims under the Civil Rights Act of 1871 and his state law claims, and conclude that dismissal was proper" (App. 16). Furthermore, Jones has not raised the constitutionality of the WPCL in his Jurisdictional Statement. Under these circumstances, the validity of the state statute was not "expressly" resolved.

Silkwood v. Kerr-McGee confirms the absence of appellate jurisdiction. *Silkwood* involved the validity of a jury verdict of punitive damages in favor of the plaintiff. A state statute specifically authorized punitive damages in such cases. The Court of Appeals for the Tenth Circuit overturned the award as preempted by federal law. The plaintiff attempted to appeal to this Court, arguing that the Tenth Circuit had "necessarily held that the state statute was unconstitutional, at least as applied in this case." 464 U.S. at 246. This Court held that it lacked

appellate jurisdiction, noting that § 1254(2) is limited to situations where a state statute "is *expressly* struck down on constitutional grounds," and does not reach cases where "an exercise of authority under state law is invalidated without reference to the state statute." 464 U.S. at 247 (emphasis added). As the *Silkwood* opinion explained:

> The Court of Appeals held that because of the preemptive effect of federal law, "punitive damages may not be awarded in this case." 667 F.2d, at 923. [*The Court of Appeals] did not purport to rule on the constitutionality of the Oklahoma punitive damages statute. The court did not mention the statute, and the parties did not contest or defend the constitutionality of the statute in their appellate briefs*. While the award itself was struck down, the statute authorizing such awards was left untouched. *Cf., Perry Education Assn.*, 460 U.S. at 42. Therefore, the present appeal is not within our § 1254(2) appellate jurisdiction.

Id. at 247 (footnote omitted, emphasis added).

The present situation is controlled by *Silkwood*. As in that case, the Court of Appeals did not purport to rule on the constitutionality of the state statute. At most, the Court of Appeals' opinion invalidated "an exercise of authority under state law without reference to the state statute." The WPCL remains fully in effect. Consequently, *Silkwood* mandates dismissal of the appeal.

II. THE COURT OF APPEALS CORRECTLY FOUND THAT JONES' ERISA CLAIMS ARE BARRED BY THE ARBITRATION AWARD.

The Court of Appeals held that the arbitration award in favor of the Fund precluded Jones from re-litigating his ERISA claims (App. 13-16). That conclusion fully comported with the precedents of this Court, which recognize that an arbitration award is final and binding on the merits of any dispute which the parties have agreed to arbitrate. *United Paperworkers International Union v. Misco*, 108 S.Ct. 364, 371-73 (1987).

Jones' Jurisdictional Statement offers only one argument to circumvent the arbitration award. Specifically, Jones cites *Barrentine v. Arkansas-Best Freight System*, 450 U.S. 728 (1981) for the proposition that "the arbitrator's determination relative to William Jones is not *res judicata* for an ERISA claim" (App. 11). This contention lacks merit.

Barrentine did not involve a claim under ERISA. Rather, the Court held that a suit for minimium wages under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et. seq.* ("FLSA"), is not barred by an arbitration award. The Court reached that decision only because a careful review of the structure, purpose, and legislative history of the FLSA dictated that result. 450 U.S. at 727-46. In short, *Barrentine* is a very narrow decision, and Jones has not identified anything in the language or legislative history of ERISA which would justify a similar result here.

To the contrary, the Court of Appeals correctly found that the instant case falls within the logic of *Shearson/American Express v. McMahon*, 107 S.Ct. 2332 (1987)(App. 15). *Shearson* concerned the enforceability of an agreement to arbitrate claims arising under § 10(b) of the Security Exchange Act, 15 U.S.C. § 78j(b) and RICO. This Court held that the "duty to enforce arbitration agreements is not diminished when a party bound by an agreement raises a claim founded on statutory rights." 107 S.Ct. at 2337. To overturn an agreement to arbitrate a particular statutory right, a litigant must prove "that Congress intended to preclude a waiver of judicial remedies for the rights at issue." *Id.* Since no such legislative intent could be demonstrated with respect to § 10(b) or RICO, the duty to arbitrate was upheld. 107 S.Ct. at 2330-46. *Accord, Mitsubishi Motors v. Soler Chrysler-Plymouth*, 473 U.S. 614, 631-40 (1985) (federal antitrust claims).

Shearson and *Mitsubishi Motors* establish that an agreement to arbitrate will be enforced, even for very complex federal statutory claims, unless, as in *Barrentine*, the party opposing the agreement can establish that Congress intended to preclude such a waiver. Jones has not identified anything in ERISA, its legislative policy, or its underlying purpose that would even vaguely rebut the presumption in favor of enforcing the results

of the arbitration. Furthermore, he has not cited any authority to rebut the Court of Appeals' contrary finding that the legislative history of ERISA in fact *encourages* non-judicial remedies, such as arbitration (App. 15).[4] Therefore, if appellate jurisdiction exists, then the decision below must be affirmed.[5]

III. ASSUMING ARGUENDO THAT THE ARBITRATION AWARD IS NOT BINDING, JONES' ERISA CLAIMS FAIL ON THE MERITS.

If the Court were to reach the merits of Jones' ERISA claims, then the inquiry would be quite limited. Nothing in the Jurisdictional Statement provides a legal basis for reversing the decision below that Jones is ineligible for a pension. Rather, the *only* substantive ERISA issue argued in any detail is Jones' claim that the Court should award him the payments he covertly made to the Fund (Jurisdictional Statement at 7-10). This request must be denied with respect to the Fund for three reasons. *First*, no right of action for "restitution" exists under ERISA. *Second*, if such a right did exist, the equities of the situation would militate against relief in this case. *Third*, if any relief is appropriate, it

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4. *See* the discussion of ERISA's legislative history in *Grossmuller v. International Union*, 715 F.2d 853, 856-57 & n.3 (3d Cir. 1983).

5. The Courts of Appeals for the Sixth and Seventh Circuits have upheld pension plan provisions which require the arbitration of ERISA claims. *Delaney v. Union Carbide Corp.*, 749 F.2d 17, 18-19 (6th Cir. 1984); *Challenger v. Local Union No. 1, Ironworkers*, 619 F.2d 645, 647-49 (7th Cir. 1980).

Jones' reliance upon *Amaro v. Continental Can Co.*, 724 F.2d 747 (9th Cir. 1984) is misplaced. The plaintiffs in that case had been laid off after a plant closing and their union filed a grievance claiming that the order in which the employees had been laid off violated the governing collective bargaining agreement. An arbitrator rejected the grievance. The employees then sued under § 510 of ERISA, 29 U.S.C. § 1140, alleging that the employer had fired them in order to prevent them from vesting in their pension rights. The Ninth Circuit held that the contractual issues in the arbitration were so different from those in the ERISA case, that the loss of the arbitration could not bar the ERISA action under principles of *res judicata*. *Amaro* is totally inapposite to this case, where Jones is trying to assert the *identical* ERISA claims which the arbitrator rejected.

should be granted entirely against Crossman Co., because the employer caused whatever injury that Jones incurred.

A. Jones Has No Cause of Action under ERISA To Recover the Payments He Made to the Fund.

The Trustees, the arbitrator, Judge Green, and the Court of Appeals relied upon *Crown Cork & Seal Co. v. Teamsters Pension Trust Fund of Philadelphia & Vicinity*, 549 F. Supp. 307 (E.D. Pa. 1982), *aff'd mem.*, 720 F.2d 662 (3d Cir. 1983), in rejecting Jones' claim for restitution. That case arose when an employer made approximately $80,000 in inadvertent overpayments to the Fund and its sister fund, the Teamsters Health and Welfare Fund of Philadelphia & Vicinity. When the Trustees refused to repay the disputed sum voluntarily, the employer brought an action under, *inter alia*, ERISA. The District Court (Giles J.) dismissed the complaint for failure to state a claim upon which relief can be granted, and the Third Circuit Court affirmed.

Judge Giles first noted that an "examination of the statutory language shows that such a cause of action [for return of mistaken contributions] is not expressly granted" in ERISA. 549 F. Supp at 310-11. Thus, the issue was whether a cause of action could be implied from the statute. Judge Giles emphasized that in applying this analysis, "the central issue is congressional intent." *Id.* at 311. Nothing in the statute, its structure, or legislative history supported a remedy to force the return of contributions. Therefore, the complaint was dismissed. *Accord Dime Coal Co. v. Combs*, 796 F.2d 394, 396-400 (11th Cir. 1986).

In this appeal, Jones apparently concedes that ERISA does not create an express cause of action for restitution. However, he argues that *Crown Cork* does not apply to him because he is an "individual," as opposed to a corporation (Jurisdictional Statement at 7-8). Jones also cites several cases, most notably *Chase v. Western Conference of Teamsters Pension Trust Fund*, 753 F.2d 744 (8th Cir. 1985), for the proposition that *Crown Cork* was wrongly decided (Jurisdictional Statement at 7-10). In

Chase, the Eighth Circuit held that an employer could sue under ERISA to recover contributions that had been mistakenly paid to a multi-employer pension fund. *Chase* made no attempt to analyze the underlying legislative intent. Rather, the court simply concluded that "right of restitution" exists "when the equities favor it." 753 F.2d at 744.

Jones' arguments are undermined by *Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134 (1985), which considered whether a plan participant may recover punitive damages under § 409 of ERISA, 29 U.S.C. § 1109. ERISA does not expressly provide such relief. Therefore, as in this case, the Court was confronted with the question of whether the remedy could be inferred from the statute under "the analysis employed in *Cort v. Ash*, 422 U.S. 66, 78 (1975)." *Russell, supra*, 473 U.S. at 138. According to *Russell:*

> Relying on the four-factor analysis employed by the Court in *Cort v. Ash*, 422 U.S., at 78, respondent argues that a private right of action for extra-contractual damages should be implied even if it is not expressly authorized by ERISA. Two of the four *Cort* factors unquestionably support respondent's claim: respondent is a member of the class for whose benefit the statute was enacted and, in view of the preemptive effect of ERISA, there is no state-law impediment to implying a remedy. But the two other factors — legislative intent and consistency with the legislative scheme — point in the opposite direction. And "unless this congressional intent can be inferred from the language of the statute, the statutory structure, or some other source, the essential predicate for implication of a private remedy simply does not exist." *Northwest Airlines, Inc. v. Transport Workers*, 451 U.S. 77, 94 (1981). "The federal judiciary will not engraft a remedy on a statute, no matter how salutary, that Congress did not intend to provide." *California v. Sierra Club*, 451 U.S. 287, 297 (1981).

473 U.S. at 145 (footnote omitted).

Reviewing the legislative history, the Court found nothing which affirmatively supported the right to recover punitive damages. This silence was fatal to the plaintiff's case, because:

> The six carefully integrated civil enforcement provisions found in § 502(a) of the statute [*i.e.*, ERISA] as finally enacted, however, provide strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly. The assumption of inadvertent omission is rendered especially suspect upon close consideration of ERISA's interlocking, interrelated, and interdependent remedial scheme, which is in turn part of a "comprehensive and reticulated statute." *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. 359, 361 (1980).

473 U.S. at 146. Consequently, the right to recover punitive damages was rejected.

Russell unequivocally supports the conclusion of *Crown Cork* that an implied remedy under ERISA will not be recognized absent affirmative proof in the language or history of the statute that Congress intended to create the remedy. This discredits the *Chase* analysis, which would recognize a right to restitution simply because a court feels that the "equities" support such relief.[6] As *Crown Cork* and *Dime Coal* correctly

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6. The other appellate cases cited by Jones to support the claim for restitution all suffer from the same defect as *Chase*, *i.e.*, failure to recognize that legislative intent is a prerequisite to the remedy. In *Peckham v. Board of Trustees*, 719 F.2d 1063 (10th Cir. 1983), for example, the court recognized a limited right to restitution without citing anything in the statute or its history to support the cause of action. In *Teamsters Local 639—Employees Health Trust v. Cassidy Trucking*, 646 F.2d 865, 867 (9th Cir. 1981), the court reached the same conclusion because it found nothing in the legislative history which was inconsistent with the remedy. This analysis, however, sets *Russell* on its head. *Russell* teaches that common law remedies, such as punitive damages or restitution, will not be recognized unless there is affirmative evidence of a legislative intent to create them.

Dumac Forestry Services v. IBEW, 814 F.2d 79, 82 (2d Cir. 1987) never decided the issue, since the pension fund in that case conceded that its refusal to return mistaken contributions was in fact subject to judicial review. Finally,

note, there is no evidence that Congress ever intended to create a right to recover mistaken pension contributions. Therefore, Jones has no cause of action in this case.

Similarly, *Russell* demonstrates that *Jones* cannot distinguish *Crown Cork* on the ground that he is an individual rather than a corporation. The plaintiff in *Russell* was a plan participant and, thus, was much more entitled to protection under ERISA than Jones, an independent contractor who had no right to benefits from the Fund. Nonetheless, this Court held that, absent the requisite legislative intent, no implied remedy for restitution will be recognized. The same result is appropriate in this case.

B. Even if a Cause of Action Did Exist for "Restitution," the Equities of the Situation Would Not Favor Relief.

Relief should be denied even if the Court were to find that a right to sue for return of mistaken contributions might exist in certain situations. Jones attempts to portray himself as an innocent victim of circumstances and contends that restitution is necessary to disgorge an unjust enrichment. The uncontroverted facts, however, reveal that considerations of equity and public policy would be flouted if he is permitted to recover the illicit payments made to the Fund.

First, the record demonstrates that the Fund is absolutely innocent of wrongdoing. Jones has never even suggested that any representative of the Fund sanctioned, or even had notice of, the self-pay scheme. Moreover, he has not articulated a legal basis for finding that the Fund violated any duty owed him.[7]

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in *Whitworth Brothers Storage Co. v. Central States, Southeast & Southeast Areas Pension Fund*, 794 F.2d 221 (6th Cir. 1986), the court conceded that nothing in ERISA explicitly or implicitly supports a right to recover mistaken contributions. The court, nevertheless, recognized such a right based on the basis of "federal common law." In other words, *Whitworth* stands for the proposition that federal courts can create remedies which Congress declined to establish. This blatant usurpation of legislative power is totally inconsistent with *Russell*.

7. The Jurisdictional Statement complains that "[o]ver the period of almost thirty (30) years, neither the employer, the Pension fund nor the union

Therefore, no policy would be served by granting an extra-statutory or unusual remedy against the Fund.

Second, a decision to restore benefits would sanction a serious violation of the law. Section 302(c)(5) of the LMRA limits contributions to multiemployer funds to contributions made by an employer "for the sole and exclusive benefit of the employees of such employer, and their families and dependents." Moreover, the "detailed basis on which such payments are to be made" must be "specified in a written agreement with the employer." This Court has construed the requirements of § 302(c)(5) strictly, recognizing that it is *illegal* for payments to be made to or from a benefit fund if the requirements of § 302(c)(5) are not satisfied. *Walsh v. Schlecht*, *supra*, 429 US. at 407.[8]

Jones and Crossman Co., however, consciously attempted to circumvent this policy — and the operative collective bargaining agreement — by their self-pay scheme. Such attempts to undermine collective bargaining agreements through use of owner-operators have constituted a serious threat to federal labor policy for many years. *See Teamsters v. Oliver*, 358 U.S. 283 (1959). A decision by this Court to render Jones "whole" would encourage similar schemes in the future by guaranteeing

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reported to William Jones on the status of his pension, whether vested or not." (Jurisdictional Statement 14). Section 105(a) of ERISA, however, specifically provides that the Fund need only provide such a statement to a "plan participant or beneficiary who so requests in writing." 29 U.S.C. § 1025(a). Since Jones never made such a request, the Fund never had a duty to make a report.

8. *Accord Trailway Lines v. Trailways, Inc. Joint Council*, 785 F.2d 101 (3d Cir. 1986); *Moglia v. Geohegan*, 403 F.2d 110, 116 (2d Cir. 1968), *cert. denied*, 394 U.S. 914 (1969) (multiemployer pension fund cannot pay benefit to widow of *bona fide* employee who was not covered by a written collective bargaining agreement); *Joint Council of Teamsters No. 42 v. Associated General Contractors*, 520 F. Supp. 3, 4-5 (C.D. Cal. 1980), *aff'd*, 662 F.2d 531 (9th Cir. 1981), *cert. denied*, 455 U.S. 1021 (1982) (multiemployer fund cannot award pensions to owner-operators in the trucking industry who functioned as independent contractors); *Thurber v. Western Conference of Teamsters Pension Fund*, *supra*, 542 F.2d at 1109 (9th Cir. 1976); *Dohrer v. Wakeman*, 14 Wash. App. 157, 539 P.2d 91, 93-94 (1975).

that a perpetrator will either receive a pension to which he or she is not entitled or, at least, be restored to his or her previous position if the scheme is uncovered. Jones even has the temerity to demand interest. Obviously, such a result would contravene public policy.

Additionally, a precedent which permitted the return of such mistaken contributions could seriously injure the Fund's financial stability. In *Crown Cork*, Judge Giles observed that the return of mistaken contributions can "severely undermine" a "fund's integrity," because once such payments are invested, they become an integral part of the trust corpus. 549 F. Supp. at 312. A fund's actuary estimates funding needs on the basis of current assets. Unanticipated refunds which occur many years after payments have been incorporated into the trust corpus (and have thus provided the basis for years of actuarial estimates and trustee decisions concerning benefit levels) can seriously disrupt financial stability.

The real issue in this case is not the slightly more than $25,000 which Jones seeks. Most requested refunds involve sums which, *standing alone*, would not threaten the Fund. This Fund, however, has had many such claims, several of which have resulted in published judicial precedents. *McHugh v. Teamsters Pension Trust Fund of Philadelphia & Vicinity*, 638 F. Supp. 1036, 1048 (E.D. Pa. 1980) (approximately $165,000); *Crown Cork, supra*, 549 F. Supp. at 308, (approximately $80,000). If a general duty to refund were recognized, such claims would become aggregated, and the Fund would be thrown into chaos. [9] That result would not injure Mr. Schaffer or the Trustees, in their capacity as fiduciaries of the Fund. Rather, the only victims would be the real participants and beneficiaries who now or in the future will look to the Fund for benefits.

When all of these factors are taken into consideration, the Trustees' decision to deny "restitution" cannot be viewed as

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9. It is impossible to predict how much money might be demanded in refunds, because there is no way to estimate the number of such claims which may be made in the future.

arbitrary or capricious. Indeed, their decision would stand even if the Court applied a *de novo* standard.

C Any Relief That Is Granted Should Be Limited to an Award Against Crossman Co.

Should the Court find that Jones is completely innocent and deserving of restitution, then relief should be limited to recovery against Crossman Co. If Jones is blameless, then Crossman Co. is totally responsible for the self-pay scheme and the injury which allegedly flowed from it. Crossman Co., moreover, was enriched since it reaped all of the savings realized by the scheme.

For example, if Jones had remained a regular member of the bargaining unit, then Crossman Co. — not Jones — would have made the payments which Jones is now seeking to recover. The self-pay scheme enabled Crossman Co. to save other expenses incurred in connection with bargaining unit members, *e.g.*, the cost of workers' compensation insurance, holidays, social security tax contributions, maintenance of Jones' vehicle.

As an employer bound by the underlying collective bargaining agreements and the Pension Plan, Crossman Co. cannot seriously plead ignorance of the illegality of the self-pay arrangement. Furthermore, an award against the company would not have the untoward impact upon federal labor policy that would arise from a ruling adverse to the Fund.

IV. THE COMPLAINT FAILS TO STATE CLAIMS FOR RELIEF UNDER 42 U.S.C. §§ 1985(3) AND 1986.

Section 2 of the Ku Klux Klan Act of 1871, as codified at 42 U.S.C. § 1985(3)[10] was enacted to abolish the lingering affects of

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10. The Section provides, in relevent part:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to

slavery during the Reconstruction Era and proscribes conspiracies designed to frustrate that goal. Its specific purpose was "to combat the prevalent animus against Negroes and their supporters." *United Brotherhood of Carpenters & Joiners v. Scott*, 463 U.S. 825, 836 (1982). To state a cause of action under § 1985(3), a plaintiff must clearly demonstrate three essential elements:

> (1) that a federally secured right has been invaded by the defendants,
>
> (2) that the defendants conspired to deprive the plaintiff of [his or] her rights, and
>
> (3) that the defendants' actions were motivated by a class-based invidiously discriminatory animus . . .

Griffin v. Breckenridge, 403 U.S. 88, 102 (1971).

In the instant case, the complaint originally accused the defendants of engaging in a conspiracy to drain and deplete his finances because he was a commissioned driver.[11] Defendants

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all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

11. Paragraphs 29, 30 and 31 of Jones' complaint allege the following:

> 29. Since May, 1972, by reason of an unlawful conspiracy plan, plot, enterprise and scheme to drain and deplete the finances of plaintiff, defendants have wrongfully taken great sums of plaintiff's money aggregating many thousands of dollars.
>
> 30. Defendants have engaged in an unlawful conspiracy, enterprise and combination to dupe and trick plaintiff into making contributions to the Fund. The said conspiracy, enterprise and combination was an

moved to dismiss under the authority of *United Brotherhood of Carpenters v. Scott*, 463 U.S. 825 (1983), which involved a conspiracy by unions to harm non-union workers. The Supreme Court denied relief as a matter of law on the ground that the statute does not "reach conspiracies motivated by economic or commercial animus." *Id.* at 838. *Id.* at 839. Judge Green properly found *Scott* to be controlling, because any conspiracy against "commissioned drivers" would be a purely economic conspiracy of the type outside the statute's reach. The Court of Appeals affirmed.

Jones has never seriously disputed the fact that *Scott* utterly discredits his § 1985(3) count as pleaded. Rather, in the District Court he attempted to shift gears by arguing that the purported conspiracy really constituted age discrimination and race discrimination because commissioned drivers are usually older or black. Judge Green, and subsequently the Court of Appeals, rejected this attempted recharacterization on two grounds. First, the statements in the affidavit were never incorporated into the complaint. Second, as Judge Green noted, "[t]he record discloses that [Jones] was denied benefits because he was not a member of a bargaining unit described in the collective bargaining agreement" (App. 6-7).

The second point is particularly important, because it demonstrates that Jones' claim could not have succeeded even if he had amended his complaint. The Trustees' decision to limit participation in the Fund to *bona fide* members of a bargaining unit has nothing to do with racial animus. As previously explained, § 302(c)(5) of the LMRA commands the Trustees to limit participation to bargaining unit members. *Walsh v. Schlecht*, *supra*, 429 U.S. at 407; *Trailways*, *supra*, 785 F.2d at

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NOTES *(Continued)*

invidious discrimination against drivers who became 'Commissioned drivers.'

31. Defendants each and every one of them, having knowledge of the wrongs being done to plaintiff, and having the power or authority to prevent or stop the commission of the wrongs, have neglected and willfully refused to act in preventing, or stopping the wrongs being done. (A.5-6).

106-08; *Moglia, supra*, 403 F.2d at 116. The Trustees of this Fund, moreover, have enforced this requirement with respect to all participants, regardless of race. *E.g., Blofsen v. Cutaiar*, 460 Pa. 411, 333 A.2d 841 (1975); *McHugh v. Teamsters Pension Trust Fund of Philadelphia & Vicinity, supra*, 638 F. Supp. at 1036; *Cage v. Teamsters Pension Trust Fund of Philadelphia and Vicinity*, 18 D.&C.3d 340 (Phil. 1981). Hence, the suggestion of a civil rights claim is pure illusion.[12]

V. JONE'S STATE LAW CLAIMS ARE PREEMPTED BY ERISA.

It is undisputed that the Fund is a multiemployer benefit plan under ERISA (App. 2). This fact dooms the various state law claims raised by Jones.

Section 514(a) of ERISA contains broad, sweeping, preemptory language which declares that ERISA shall, "supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). This Court has interpreted this language in an expansive manner, especially when a plaintiff is attempting to recover from an ERISA plan. In *Pilot Life Insurance v. Dedeaux*, 107 S.Ct. 1549 (1987), for example, the plaintiff sued an ERISA fund for benefits and other financial relief under several state law tort theories. The Court held that any state law which authorized a cause of action to recover from a plan for "alleged improper processing of a claim

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12. The civil rights claim fails for an additional reason. Jones' attempt to allege racial discrimination is basically a disparate impact claim. In essence, he alleges that the defendants intended to injure commission drivers, a majority of whom happened to be black or otherwise protected by the statute. To state a claim under § 1985(3), however, Jones would have to allege that the original purpose of the self-pay scheme was to injure blacks. *Griffin v. Breckenridge, supra*, 403 U.S. at 102. Since no such allegation has been made, no valid § 1985(3) claim has been averred.

The Court of Appeals correctly noted that since 42 U.S.C. § 1986 simply creates a cause of action for violations of § 1985(3), the demise of the § 1985(3) claim necessarily ended the § 1986 claim.

for benefits" would "undoubtedly meet the criteria for preemption under § 514(a)." *Id.* at 1553. *Accord, Metropolitan Life Insurance Co. v. Taylor*, 107 S. Ct. 1542 (1987).

However they are articulated, Jones' state law theories simply constitute an attempt to use state law to remedy "alleged, improper processing of a claim for benefits." *Dedeaux* and *Taylor* teach that state law cannot affect an ERISA plan's obligation, or lack of obligation, to pay claims. *Accord Shaw v. Delta Air Lines*, 463 U.S. 85 (1983) (invalidating state statute which required ERISA fund to pay pregnancy benefits). Therefore, the Court of Appeals' decision to hold Jones' state law claims preempted is beyond reproach.

VI. IF THE JURISDICTIONAL STATEMENT IS TREATED AS A PETITION FOR A WRIT OF CERTIORARI, THEN THE PETITION SHOULD BE DENIED.

The defects in Jones' appeal would not be cured by treating his appeal as a petition for a writ of certiorari. As explained above, Jones' arguments lack merit under the decisions of this Court. Thus, the case is not a vehicle for resolution of important issues.

Futhermore, after the Court of Appeals issued its ruling, the parties affiliated with the Fund moved for publication of the opinion. The motion was denied (Jurisdiction Statement at 1, 7). As a result of this refusal to publish, the Court of Appeals' opinion is not a binding precedent of the Third Circuit. *See* § VIII(C) of the Third Circuit's Internal Operating Procedures. *See also* V(F) of the Third Circuit's Internal Operating Procedures ("An opinion which appears to have value only to the trial court or to parties is ordinarily not published"). In short, the opinion below is simply the adjudication of one pension claim in a highly specific factual situation. As such, the case is not worthy of this Court's consideration.

CONCLUSION

For the foregoing reasons, Messrs. Schaffer, Lemon, Cardullo, Coyle, Fox, Cimino, and Dagen request this Court to dismiss the appeal or to affirm the ruling below. Alternatively, this Court is asked to deny the petition for writ of certiorari.

Respectfully submitted,

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